

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Michael D. Johnson,

Complainant,

vs.

NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING

Nancy Levitz, formerly known as Nancy  
Havlish, and the Levitz for City Council  
Campaign,

Respondents.

**TO:** Michael D. Johnson, 7109 Jamaca Avenue North, Stillwater, MN 55082, and Nancy Levitz, and the Levitz for City Council Campaign, 10155 – 119<sup>th</sup> Street North, Grant, MN 55082.

On November 18, 2004, Michael Johnson filed a complaint with the Office of Administrative Hearings alleging violations of Minn. Stat. § 211B.06 in campaign material distributed by Nancy Levitz and the Levitz for City Council Campaign. On November 22, 2004, an Administrative Law Judge determined that certain allegations in the Complaint set forth a prima facie violation of Minn. Stat. § 211B.06. No probable cause hearing was required.

**THEREFORE, NOTICE IS HEREBY GIVEN** that this matter has been assigned to a panel of three Administrative Law Judges for an evidentiary hearing. The assigned Administrative Law Judges are: Allan W. Klein (presiding judge), George A. Beck, and Barbara L. Neilson. The address of the Administrative Law Judges is 100 Washington Square, Suite 1700, 100 Washington Avenue South, Minneapolis, MN 55401-2138. The Administrative Law Judges may be reached at telephone number 612-341-7600 and the Office's fax number is 612-349-2665.

**IT IS FURTHER ORDERED AND NOTICE IS HEREBY GIVEN** that this matter is scheduled for a **prehearing conference** to be held by telephone on **December 20, 2004, at 1:30 p.m.**, and an **evidentiary hearing** to be held at the Office of Administrative Hearings on **January 19, 2005, at 9:30 a.m.** The presiding Administrative Law Judge will initiate the calls to the parties for the prehearing conference. **Each party must file a Notice of Appearance with the Office of Administrative Hearings prior to the prehearing conference with the telephone number they wish to be contacted at for the prehearing conference.** A Notice of Appearance form is attached. At the prehearing conference, preliminary matters will be addressed such as identifying the issues to be resolved and determining whether the matter may be disposed of without an evidentiary hearing.

The evidentiary hearing has been ordered pursuant to the authority granted to the Chief Administrative Law Judge by Minn. Stat. § 211B.35, subd. 1. The hearing will

be conducted pursuant to Minn. Stat. §§ 211B.35 and 211B.36. Information about the evidentiary hearing and copies of state statutes and rules may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us). The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

### HEARING PROCEDURES

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judges. The panel may consider any evidence and argument submitted until a hearing record is closed, or may continue a hearing to enable the parties to submit additional testimony. All hearings must be open to the public.

### WITHDRAWAL OF COMPLAINT

At any time before an evidentiary hearing begins, a complainant may withdraw a complaint. After the evidentiary hearing begins, however, a complaint filed may only be withdrawn with the permission of the panel.

### COSTS

If the panel determines the complaint is frivolous, it may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the office in the proceeding in which the complaint was dismissed.

### BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

### DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

- (1) The panel may dismiss the complaint.
- (2) The panel may issue a reprimand.

- (3) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.
- (4) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (5) The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within three days after the hearing record closes, if an expedited probable cause hearing was required by section 211B.33; or within 14 days after the hearing record closes, if an expedited probable cause hearing was not required by section 211B.33.

#### JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

#### REASONABLE ACCOMMODATION

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Office of Administrative Hearings must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612-341-7610 (voice) or 612-341-7346 (TTY).

Dated this 2nd day of December 2004.

s/Raymond R. Krause  
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RAYMOND R. KRAUSE  
Chief Administrative Law Judge